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COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON

Pierce County Cause No. 14-2-09107-4

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ROBERT REGINALD COMENOUT SR.,

Petitioner/Appellant,

v.

WASHINGTON STATE LIQUOR CONTROL BOARD;

Respondent/Appellee.

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**REPLY BRIEF OF APPELLANT**

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## **INTRODUCTION**

The Administrative Procedure Act cannot apply where there is no subject matter or personal jurisdiction. The factual statement of the State, at page 3 of its Brief, admits “This land is considered Indian Country” and also admits Edward Comenout Jr. was an enrolled Quinault Indian owning the land that is held in trust. These admitted facts are all that is needed. The undisputed facts prove that the state statutes are preempted by federal law. Therefore, the Comenouts prevail.

The State also did not respond to E, page 19-26, holding that the Federal courts have exclusive jurisdiction over Indian allotment owners, including the Comenouts. The State also failed to respond to the argument that the Quinault Tribe did not govern the allotment, K at 33. The contraband issue, I at 31, was also ignored. These are undisputed conclusive legal issues. The State’s substantive arguments all argue that Comenout must prove that he could legally possess unstamped cigarettes in Indian Country. The argument is refuted here, as among other arguments, state tax law cannot impose any direct tax on any Indian operating in Indian Country.



## **COUNTER ISSUES TO PROCEDURAL STANDARD OF REVIEW**

The State, on page 4 of its Brief, notes that the proceeding was commenced under RCW § 82.24.135 stating that it applies “to all cases of seizure of property made subject to forfeiture under this chapter.” The cigarettes were owned by an Indian and seized from his trust allotment by state agents who had no authority to go onto the trust land. The statute, RCW § 82.24.135(5), even if applicable, requires the property to be “promptly returned.” Here, it has been destroyed by the State. The State (fn 2, page 6) states they still have the cigarettes, but 8-year-old commercial cigarettes are worthless due to staleness. The agency failed to follow the “prescribed procedure.” RCW § 34.05.570(3)(c).

### **The administrative procedure is unconstitutional as it violated several state and federal constitutional safeguards.**

Since the statutory remedy no longer can give the Comenouts relief due to the State’s cumulative actions, the entire proceeding is null and void as the administrative proceeding cannot supply a remedy. The Constitutional protections of federal preemption apply, U.S. Const. art. 6, cl. 2 (U.S. Const. “shall be the supreme law of the land”); art. 1, § 8, cl. 3 (Congress has power to regulate Indian tribes); art. 2, § 2, cl. 2 (President has the power of treaty

making); U.S. Const. art. 1, § 10 “No state shall enter into any treaty.” Wash. Const. art. 26, Second: “Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States.” RCW § 82.24.900: “The provisions of this chapter shall not apply in any case in which the state of Washington is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States.” See *McClanahan v. State Tax Commissioner of Arizona*, 411 U.S. 164, 93 S.Ct. 1257, 36 L.Ed.2d 129 (1973). “. . .the State is totally lacking in jurisdiction over both the people and lands it seeks to tax.” *Id.* at 181. Due process is violated as the seizure is without notice and a right to be heard. *U.S. v. Clarke*, 445 U.S. 253, 100 S.Ct. 1127, 63 L.Ed.2d 373 (1980) applies. It rejected a city’s attempt to take an Indian allotment by physical force without advance condemnation proceedings. The attempt was inverse condemnation violating due process. *Id.* at 255. State search warrants are not validly issued to allow state agents to seize Indian goods in Indian Country. See Comenout’s Brief pages 28-30. The State has no state Court jurisdiction to collect against an Indian in Indian country. *Williams v. Lee*, 358 U.S. 217, 79 S.Ct. 269, 3 L.Ed.2d 251 (1959). U.S. Const. art. 1, § 8, cl. 3.

Here, the relief should be granted as the procedure violated many constitutional provisions. The seizure was unconstitutional and outside the authority of the Liquor Board agent's authority to go in to Indian country. RCW § 34.05.570(4)(c)(i), (ii), (iii) are violated. Neither the Liquor Board nor Thurston County had authority or the power to act on the issue exclusively governed by federal law in the federal courts. The State, at page 6 of its Brief, admits that constitutional violations and erroneous law are reviewable. RCW § 34.05.570(3)(a)(b)(c). Subject matter and personal jurisdiction does not exist in this case. The reason is that it is governed by both state and federal constitutions and federal statutes. See 25 U.S.C. § 345 and 25 U.S.C. § 465. 25 U.S.C. § 349 states allotments are "subject to the exclusive jurisdiction of the United States." "Approximately 11 million acres of land are held as allotments." *Cohen's Handbook of Federal Indian Law*, § 16.03[4][a], page 1079 (Nell Jessup Newton ed. 2012). U.S. Const. art. 1, § 8, cl. 3 and Wash. Const. 26, Second agree that the U.S. Congress has exclusive jurisdiction. Review is also based on the question of the State's jurisdiction, a question of law also reviewed de novo. *State v. Jim*, 173 Wash.2d 672, 678, 273 P.3d 434 (2012). *Young v. Clark*, 149 Wash.2d 130, 132, 65 P.3d 1192 (2003) requires dismissal where there is no jurisdiction.

*Booker Auction Co. v. State, Dept. of Revenue*, 158 Wash.App. 84, 88, 241 P.3d 439 (Div. III, 2010) notes the constitutional exception. The review is also from the granting of summary judgment.

**The search warrant issued by Pierce County was invalid.**

The State's Brief, at footnote 5 on page 9, argues that "Comenout did not contest the validity of the search warrant itself." Comenout's Opening Brief, at pages 28-29, states that state search warrants issued to search Indian country are not valid unless issued pursuant to Federal Rule of Criminal Procedure 41 and requested by a federal prosecutor. The State relies on *State v. Clark*, 178 Wash.2d 19, 308 P.3d 590 (Wash. 2013). *Clark* concerned a crime on fee land by an Indian. The Opinion holds "the State lacks jurisdiction over crimes committed on trust or allotment land within reservation borders. RCW § 37.12.010." *Id.* at 25. The opinion also notes that federal preemption did not apply. *Id.* at 26. The appellate court opinion, *State v. Clark*, 167 Wash.App. 667, 274 P.3d 1058 (Div. 3, 2012), *id.* at 672, cites *U.S. v. Baker*, 894 F.2d 1144 (10<sup>th</sup> Cir. 1990), also cited by Comenout at page 29 of his Opening Brief. *Clark* distinguished *Baker* stating "Unlike Colorado in the *Baker* case, Washington had jurisdiction over the crime it was prosecuting." 167 Wn.App. at 672. Comenout's Opening Brief, at pages

18-27, cites persuasive and uncontroverted authority that Comenout's allotment was exclusively within federal jurisdiction. *Sycuan Band of Mission Indians v. Roache*, 788 F.Supp. 1498, 1507 (D.C. Cal. 1992) follows *Baker*. *Clark* does not apply as the State has no jurisdiction over the Comenout land to proceed against an Indian owner for the owner's actions on the land. The search warrant is invalid.

**An Indian in Indian Country can possess unstamped cigarettes.**

The State's Brief at page 8, without citation or authority, argues that anyone possessing unstamped cigarettes has the burden of proof to demonstrate a "lawful right to possession." "Cigarettes to be consumed on the reservation by enrolled tribal members are tax exempt and need not be stamped." *Dept. of Taxation and Finance of New York v. Milhelm Attea & Bros., Inc.*, 512 U.S. 61, 64, 114 S.Ct. 2028, 129 L.Ed.2d 52 (1994). An Indian is exempt from the tax. He/she only has to collect when the cigarettes are sold to a taxable buyer. RCW § 82.24.010(7). This is the first taxable event. RCW § 82.24.080(2). The State did not dispute the contrary citations in Comenout's Opening Brief (pages 30-32) on this issue. "If the legal incidence of an excise tax rests on a tribe or on tribal members for sales made inside Indian country, the tax cannot be enforced absent clear congressional

authorization.” *Oklahoma Tax Commission v. Chickasaw Nation*, 515 U.S. 450, 458-9, 115 S.Ct. 2214, 132 L.Ed.2d 400 (1995), citing *Moe v. Confederated Salish and Kootenai Tribes of Flathead Reservation*, 425 U.S. 463, 475-481, 96 S.Ct. at 165-166, 48 L.Ed.2d 96 (1976). The “categorical” bar is against taxation, *ibid.* at 459, and is a presumption against tax. While in general, tax exemptions are not to be presumed and statutes conferring them are to be strictly construed. *Heiner v. Colonial Trust Co.*, 275 U.S. 232, 48 S.Ct. 65, 72 L.Ed. 256 (1927), the contrary rule is to be applied to tax exemptions “secured to the Indians by agreement between them and the national government.” *Carpenter v. Shaw*, 280 U.S. 363, 366, 50 S.Ct. 121, 74 L.Ed 478 (1930). *Confederated Tribes and Bands of the Yakama Indian Nation v. Gregoire*, 658 F.3d 1078 (9<sup>th</sup> Cir. 2011) removes any doubt. The State will not “issue refunds to retailers for the cost of ‘cigarette stamps’.” *Id.* at 1089. The act was amended in 1995, “. . .to preclude retailers from affixing stamps.” *Id.* at 1088. *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134, 100 S.Ct. 2069, 65 L.Ed.2d 10 (1980) states: “We struck down the tax as applied to sales to Indians. 425 U.S., at 475-481, 96 S.Ct. at 1642-1645,” *id.* at 151, fn. 26. RCW § 82.24.260(1)(c) titled “Selling or disposal of unstamped cigarettes” incorporates this

exemption as sales to enrolled members are exempted. *Ward v. New York*, 291 F.Supp.2d 188 (D.C.N.Y.), allowed an injunction against the state from interfering with on reservation conduct between the exempt tribal members. “The general presumption is that state law is inapplicable to on-reservation conduct involving only tribe members. *Hicks*, 533 U.S. at 362, 121 S.Ct. 2304. At this stage of the litigation, it does not appear that Defendants are able to overcome that presumption.” *Id.* at 207. The reference is to *Nevada v. Hicks*, 533 U.S. 353, 121 S.Ct. 2304, 150 L.Ed.2d 398 (2001). *Nevada* observed that even the *Colville* case, *Washington v. Confederated Tribes of the Colville Reservation*, 447 U.S. 134, 100 S.Ct. 2069, 65 L.Ed.2d 10 (1980), granted jurisdiction only on cigarette taxation of non Indians, *id.* at 395. The presumption sought by the State, presuming that anyone possessing unstamped cigarettes is committing a crime, is completely wrong as the presumption is in favor of the Comenouts.

The principle applies as Ed Comenout Jr. could own an allotment even if it is not on a reservation. 25 U.S.C. § 334. He was factually an Indian retailer on a property defined as Indian Country. 18 U.S.C. § 1151(c), a definition adopted in RCW § 82.24.010(3). Indian taxation of Indians in Indian Country are within the “exclusive province of the Federal

Government.” *McClanahan v. State Tax Commission of Arizona*, 411 U.S. 164, 165, 93 S.Ct. 1257, 36 L.Ed.2d 129 (1973). Jurisdiction of civil actions regarding Indian allotments is in federal court. 28 U.S.C. § 1353. The owners of an allotment can, as plaintiff, bring an action in federal court. 25 U.S.C. § 345. Trespass by the State is also within this right of action. *Nahno-Lopez v. Houser*, 625 F.3d 1279, 1282 (10<sup>th</sup> Cir. 2010). The State asserts that Comenout had to stamp even cigarettes he and other Indians owned on his allotment.

RCW § 82.24.260(c) indicates that “unstamped cigarettes” in possession of an Indian tribal organization is lawful. RCW § 82.24.080(2) allows “transfers of possession to another person who, by law, is exempt.” RCW § 82.24.040(5) allows a wholesaler to sell unstamped cigarettes to an Indian tribal organization. The definition includes Comenout, an owner who needs no license and owned an Indian allotment in Indian country, 18 U.S.C. § 1151(c), RCW § 82.24.010(6). The Indian is entitled to the same exemption as the 285,000 military base purchasers. RCW § 82.24.290(3). They possess unstamped cigarettes in large quantities. Washington allows all cigarette sales to 285,000 or more military veterans from military base food stores to be unstamped. See Washington State Department of Revenue, March 15,



2005 publication, attached as Appendix A, to this reply. The exception violates constitutional equal protection. Wash. Const. art 1, § 12. All exceptions to state tax must be the same. *Associated Grocers, Inc. v. State*, 114 Wash.2d 182, 188, 787 P.2d 22 (1990).

**The State cigarette tax law on Indians is preempted by federal law.**

Further, state statutes requiring notice are preempted. *Tohono O'odham Nation v. Glendale*, 804 F.3d 1292 (9<sup>th</sup> Cir. 2015) invalidated a state statute that allowed a city to incorporate county land within city limits. The statute prohibited a planned casino of the Indian tribe that bought the land that was surrounded by the City of Glendale. The state law was enacted after the tribe bought the land. The case held the state statute invalid based on federal preemption. *Id.* at 1301. The case discusses types of preemption and applied obstacle preemption. U.S. Const. art. 6, cl. 2. Obstacle preemption applies when state law purposes the objectives of Congress. *Ibid.* at 1297. Congress wanted Indians, including Edward Comenout Sr., to assimilate into mainstream society. See *Cohen's Handbook of Federal Indian Law* § 16.03[2][b] Page 1073 (Nell Jessup Newton ed 2012).

*Rollins v. Bombardier Recreational Products, Inc.*, \_\_\_ P.3d \_\_\_, 2015 WL 9274912 (Div. 1, 2015), also applies obstacle preemption to

preempt the state law regulation of jet skis. On \*3: “Because Rollins product claim directly conflicts with explicit, uniform safety standards promulgated by the Coast Guard acting within the scope of its congressionally delegated authority, it is preempted.” Both state and federal decisions are the same on this issue.

The State argues, at pages 17 and 18 of its Brief, that the state tobacco laws prohibit possession and that RCW § 82.24.250 requires Indian transportation to give notice to the state. The argument, despite Comenout’s argument that the cigarette tax is no longer a requirement, also ignores the following cases that Comenout needs no cigarette license. *Moe v. Confederated Salish and Kootenai Tribes of Flathead Reservation*, 425 U.S. 463, 480, 96 S.Ct. 1634, 48 L.Ed.2d 96 (1976) (state tobacco license on Indians preempted); *State ex rel. Wasden v. Native Wholesale Supply Co.*, 312 P.3d 1257 (Idaho 2013) “We hold that NWS’s sales to Warpath were exempt from state taxation and NWS is therefore not required to obtain a wholesale permit.” *Id.* at 1264. Warpath is owned and operated by a member of the Coeur d’Alene Tribe. *Id.* at 1261. *State v. Atcitty*, 215 P.3d 90 (N.M. 2009) held that an Indian in Indian Country did not have to register with the state as a sex offender. The registration requirement was preempted by

federal law. *Id.* at 95. *Direct Marketing Ass’n v. Brohl*, \_\_\_ U.S. \_\_\_, 135 S.Ct. 1124, 191 L.Ed.2d 97 (2015) confers federal jurisdiction to strike down notice provisions requiring out of state non collecting retailers to notify the state of sales to residents. Even if the state tax law applied, the requirement of notice at RCW § 82.24.250(1) is not applicable to Indians in Indian country. *Mahoney v. State Tax Commission*, 524 P.2d 187 (Idaho 1973) and *Ward v. New York*, 291 F.Supp.2d 188 (W.D.N.Y. 2003) apply. The State cannot regulate “the manner in which tribe members on the reservation acquire cigarettes.” *Id.* at 207.

***Yakama*, 658 F.3d 1087, and *Moe*, 425 U.S. 463, allow Indians in Indian Country to possess cigarettes - no compliance is required.**

The State argues, at page 22, that *Yakama* and *Moe* do not allow Indian possession of unstamped cigarettes in Indian country. *Confederated Tribes and Bands of the Yakama Indian Nation v. Gregoire*, 658 F.3d 1078 (9<sup>th</sup> Cir. 2011) states: “the Act does not *require* it, rather that is an economic choice left to the Indian retailers.” *Id.* at 1087. “. . .the cigarette tax applies only to the ‘first taxable event and upon the first taxable person’ under RCW § 82.24.080. There is no dispute between the parties that as between an Indian retailer and a non Indian purchaser, the latter is the first *taxable* person.” *Ibid.* at 1087. “A fair construction of these provisions leads to the

conclusion that an Indian retailer would be excluded from paying a tax for sales to members.” *Id.* at 1088. *Moe v. Confederated Salish and Kootenai Tribes*, 425 U.S. 463, 480, 96 S.Ct. 1634 (1976) also rejected tax on Indian-to-Indian sales. The only opportunity that the State has ever had on an Indian retailer was a minimum burden to collect tax on sales to non Indians. The opportunity is now severed by *Yakama*, *supra* at 1087 quotes RCW § 82.24.900 “[T]he provisions of this chapter shall not apply where the state is prohibited from taxing under the Constitution of the state on the Constitution of the laws of the United States.” *Yakama*, *supra* at 1088 also states:

The language also indicates that if an Indian retailer ever found itself facing a State collection effort for the retailer’s non-payment of the tax, the retailer would be shielded from civil or criminal liability, except in the instance where the Indian retailer has failed to transmit the tax paid by the consumer and collected by the retailer.

*Washington v. Confederated Tribes of the Colville Reservation*, 447 U.S. 134, 100 S.Ct. 2069, 65 L.Ed.2d 10 (1980) noted that the Makah, Lummi and Colville Tribes imposed their own cigarette tax. *Id.* at 151. The state tax statute, RCW § 82.24.260, is headed - “Person to pay or affix stamps-liability” and excepts an Indian Tribal Organization with respect to sales to enrolled members of the tribe. *Moe*, 425 U.S. at 480 excludes all sales “to Indians.” *Moe* also rejects all state tobacco licenses on reservation Indians.

*Ibid.* at 480. Interstate cigarette laws also prohibit the State from litigating against “an Indian in Indian country.” 18 U.S.C. § 2346 (b)(1). See e.g. *City of New York v. Gordon*, 1 F.Supp.3d 94, 102-3 (D.C.N.Y. 2013). In any event, the State cannot pursue this civil suit in its courts. Jurisdiction is prevented by *Williams v. Lee*, 358 U.S. 217, 79 S.Ct. 269, 3 L.Ed.2d 251 (1959). RCW § 82.24.260(c) excepts an Indian tribal organization as a lawful possessor. The State attempts to hold a non taxable Indian subject to state law of mere possession. There is no provision in the Washington Cigarette Tax Law for the purchase of exempt stamps. Some states require an exempt stamp. Washington has not enacted any law or regulations to issue exempt stamps. Stamps can only be purchased for “an amount equaling the tax due.” Only wholesalers can purchase tax stamps. RCW § 82.24.030(2). Only a wholesaler can get a refund by proving that the cigarettes were unfit for sale or sold “outside the state.” RCW § 82.24.210. The issue of contraband depends on notice. Notice of shipment out of state is unnecessary. *Paul ex rel. Paul v. State, Dept. of Revenue*, 110 Wash.App. 387, 392, 40 P.3d 1203 (Div. 1, 2002). A contract carrier can haul unstamped stock. WAC 458-20-192(9)(a)(i)(C) allows unstamped stock for sales “to other Indians.” The system of attaching stamps to each package (RCW §

82.24.060) requires a stamp machine. Stamps are purchased from banks in minimum cost of about \$20,000 per roll. Therefore, it is impossible to collect the tax from a taxable purchaser as the tax stamp system does not allow it. It is not like a sales tax remitted on tax returns. *U.S. v. Baker*, 63 F.3d 1478 (9<sup>th</sup> Cir. 1995) was decided before the 2006 amendment P.L. 109-177, 120 stat 192, 223, March 9, 2006, Section 121 to 18 U.S.C. 2346(d) as the 1995 Committee Report. *Id.* at 1484 has now been incorporated in the law. See *City of New York v. Gordon*, 1 F.Supp.3d 94 (D.C.N.Y 2013). The Indian-to-Indian cases across state lines no longer apply. The state law is preempted by the Federal Statute. The state law now in existence allows unstamped military cigarettes and Indian-to-Indian unstamped cigarettes. The State's argument is not supported by current law.

**The *Comenout* case cannot be binding authority.**

The State's Brief, at page 12, admits that *State v. Comenout*, 173 Wash.2d 235, 267 P.3d 355 (2011), was dismissed. The Superior Court Order returning the seized property should have been obeyed. See Appendix B, dated August 23, 2012, attached to this reply. The statement is: "Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim,

property may be disposed of according to law.” The claim was made August of 2008. C.P. 126.

An Indian not residing on a reservation may own an allotment. 25 U.S.C. § 334. An Indian in Indian country is subject to prosecution federally if the offense was committed in Indian country. 25 U.S.C. § 1301(4). 18 U.S.C. § 1151(c) applies to Comenout’s allotment. A non member Indian must be living on another Indian reservation to be subject to prosecutions by the tribe on which he is living. See, e.g., *U.S. v. Lara*, 541 U.S. 193, 196, 124 S.Ct. 1628, 158 L.Ed.2d 420 (2004). The State’s argument failed to rebut *Miami Tribe of Oklahoma v. U.S.*, 656 F.3d 1129 (10<sup>th</sup> Cir. 2011). It holds that a tribe cannot rule beyond its borders. “Conversely, where no expression of congressional intent or purpose exists, a tribe cannot establish jurisdiction through its unilateral actions.” *Citizens Against Casino Gambling in Erie County v. Stevens*, 945 F.Supp.2d 391, 401 (D.C.N.Y. 2013).

Since the case, on the prosecution’s own ex parte motion dismissed the case, Comenout’s version of facts could never be presented. *Comenout*, *supra*, at 238, applied Public Law 280 and followed *State v. Cooper*, 130 Wash.2d 770, 928 P.2d 406 (1996), a child molestation case. *Comenout* was

a state tax prosecution, as noted in Comenout's Opening Brief, page 8.

Public Law 280 expressly precludes state tax from its coverage.

Thus, rather than inferring a negative implication of a grant of general taxing power in s 4(a) from the exclusion of certain taxation in s 4(b), we conclude that construing Pub. L. 280 in pari materia with these acts shows that if congress in enacting Pub. L. 280 had intended to confer upon the states general civil regulatory powers, including taxation, over reservation Indians, it would have expressly said so.

*Bryan v. Itasca County, Minnesota*, 426 U.S. 373, 390, 96 S.Ct. 2012, 48 L.Ed.2d 710 (1976) (rejecting mobile home tax owned by an Indian living on trust land). The reference is to 28 U.S.C. § 1360 (a) and (b) that is part of P.L. 280. It states "Nothing in this section shall authorize. . .taxation or any personal property. . .belonging to any Indian. . .subject to a restriction on alienation."

The *Comenout* case also eviscerated the Washington Constitution Article 26, Second "and the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States." *Comenout, id.* at 340, held that any off reservation site is controlled by the State. The holding clashes with the State Constitution. ". . .there is nothing in the Constitution of the United States to require it, or to prevent a state from



allowing past action to be modified while a case remains in court.” *King v. State of West Virginia*, 216 U.S. 92, 100, 30 S.Ct. 225, 54 L.Ed. 396 (1910). 25 U.S.C. § 349 states that allotments shall “be subject to the exclusive jurisdiction of the United States.” 25 U.S.C. § 465, gives the Secretary of Interior a right to establish public domain lands “within or without existing reservations.” Anywhere, anytime. “Such lands or rights shall be exempt from State and local taxation.” Rights include “surface rights.” Non reservation Indians can own allotments. 25 U.S.C. §§ 334, 336, 337. “Federal common law governs an action for trespass on Indian lands.” *U.S. v. Milner*, 583 F.3d 1174, 1182 (9<sup>th</sup> Cir. 2009). Unlawful presence on an allotment is a common law trespass giving jurisdiction under 25 U.S.C. § 345. *Nahno-Lopez v. Houser*, 625 F.3d 1279, 1282 (10<sup>th</sup> Cir. 2010). All statutes involving Indian allotments are still in force. 25 U.S.C. § 335. The restrictions on the Comenout land have not been removed. Until removed, the lands shall be exempt from State and local taxation. 25 U.S.C. § 465.

Collateral estoppel requires a final judgment on the merits. *State v. Williams*, 132 Wash.2d 248, 254, 937 P.2d 1052 (1997). The party asserting collateral estoppel bears the burden of proof. *Id.* at 254.

After the *Comenout* case, the Washington State Supreme Court

decided *State v. Jim*, 173 Wash.2d 672, 273 P.3d 434 (2010). *Jim* held that Maryhill, an off reservation fishing site, was a reservation even though it was reserved for use of four Indian tribes, two of which were located in Oregon. *State v. Comenout* was distinguished on the basis that the Comenout land was held by an individual, not a tribe. *Id.* at 685. The distinction is contrary to 25 U.S.C. § 465 which includes “trust or otherwise restricted allotments.” “In practice, the Department of Interior has treated the two forms of tenure identically for virtually all purposes.” *Cohen’s Handbook of Federal Indian Law*, § 16.03(1), page 1071 (Nell Jessup Newton ed. 2012). *U.S. v. Ramsey*, 271 U.S. 467, 46 S.Ct. 559, 70 L.Ed. 1039 (1926). A restricted allotment is a convenience to the Indian in fee by “prohibiting its alienation.” *Id.* at 470. “. . . it would be quite unreasonable to attribute to Congress an intention to extend the protection of the criminal law to an Indian upon a trust allotment and withhold it from one upon a restricted allotment.” *Id.* at 471-2.

The State, at page 13, refers to the Governor’s authorization to collect state tax from Indian retailers, citing RCW § 43.06.455(3). In its zeal to protect the State’s high cigarette tax, the State tried to require Comenout to be licensed by the Quinault tribe. The State’s Brief, at page 14, quotes the compact and argues that Comenout had to be licensed. The permission to the

Governor by the legislature, RCW § 43.06.455(14)(iii), did not designate the requirement to license an owner of a restricted off reservation allotment. If on an allotment and owner operated, no license was required. The Compact, C.P. 487, states that no third party “shall have any rights or obligations under the compact.” The U.S. Const. art. 1, § 10, prohibits treaties. The compact is a treaty with an Indian tribe. The validity of the cigarette tax compact is questionable as the federal government, and not the state, is the only government authorized to make treaties. Comenout was not a party to the compact. Washington is not in comity with the Quinault Tribe, therefore the State cannot collect the Quinault’s taxes. See *Franchise Tax Board of California v. Hyatt*, 538 U.S. 488, 493, 123 S.Ct. 1683, 155 L.Ed.2d 702 (2003). In no event, do the courts of Washington have authority to prosecute or collect taxes imposed by an Indian tribe.

The only binding effect of the *Comenout* case is the Court’s order to return the cigarettes. Even if pursued to final judgment, the *Comenout* case is wrong and superceded by subsequent law. *Confederated Tribes of Chehalis Reservation v. Thurston County Bd. of Equalization*, 724 F.3d 1153 (9<sup>th</sup> Cir. 2013) applies 25 U.S.C. § 465 to a tribe and rejected the state law. The case held that the county tax statute was preempted by federal law. *Id.*

at 1159. The State, at page 24 of its Brief, argues that this case was limited to property tax. The argument ignores the Comenout's Opening Brief at page 11. *Warren Trading Post v. Arizona State Tax Commission*, 380 U.S. 685, 691 f. 19, 85 S.Ct. 1242, 14 L.Ed.2d 165 (1965), holds that all state taxes, including excise taxes, are preempted under the federal constitution. *Cabazon Band of Mission Indians v. Smith*, 388 F.3d 691, 701 (9<sup>th</sup> Cir. 2004), preempts state statutes requiring covers or removal of emergency lights off reservation on Indian police vehicles but not other emergency vehicles. *Cabazon* was cited in Comenout's Opening Brief at page 16. *Thurston County* (724 F.3d 1078) was decided after *Comenout*. *Confederated Tribes of the Yakama Indian Nation v. Gregoire*, 658 F.3d 1078 (9<sup>th</sup> Cir. 2011) is in point and not mentioned in *Comenout*. The State, at page 23, in discussing the 2011 case of *Confederated Tribes and Bands of the Yakama Indian Nation v. Gregoire*, 658 F.3d 1078 (9<sup>th</sup> Cir. 2011) makes the argument at page 23: "Nothing in *Yakama Nation* can be construed as permitting Comenout to possess unstamped cigarettes." The *Yakama* case was reviewed by Comenout's Opening Brief at pages 13-14. *Yakama* comprehensively reviewed the State cigarette tax law, and held that the Indian retailer was not a taxable person, *id.* at 1089; that the tax is prohibited by the respective

constitutions citing RCW § 82.24.900 and that an Indian retailer would be “shielded” from civil liability. *Id.* at 1087. Other preemption cases are now joined by *Tohono O’odham Nation v. City of Glendale*, 804 F.3d 1292 (9<sup>th</sup> Cir. 2015), filed November 6, 2015, and *Rollins v. Bombardier Recreational Products, Inc.*, \_\_\_ P.3d \_\_\_, 2015 WL 9274912 (Div. 1, 2015) filed December 21, 2015. Both cases uphold federal preemption of state law.

**The Cigarette Tax Law was passed after the allotment was issued.**

The time of passage of the law in *Tohono O’odham v. Glendale*, 804 F.3d 1292 (9<sup>th</sup> Cir. 2015) is relevant to Comenout’s acquisition of the allotment in 1926. *People’s v. Puget Sound’s Best ChickenA, Inc.*, 185 Wash.App. 691, 345 P.3d 811 (Div. 2, 2015) applies. Laws passed after the land was taken as a federal enclave do not apply. The Comenout land was defined as a federal enclave. *Matheson v. Kinnear*, 393 F.Supp. 1025, 1027 (D.C. Wash. 1974). The state tax law was enacted in 1935, after the land was purchased. Appendix C to this reply attaches the certified copy of the deed filed in 1926. RCW § 82.24.010. Three cases on federal preemption of state statutes, including the subject cigarette tax law, were decided after the *Comenout* case. One case, *State v. Jim*, 173 Wash.2d at 685, limited the *Comenout* case. The State insists that Ed Comenout, an enrolled Indian then

doing business on his trust land in Indian Country, must obey the State cigarette tax law, when the 1995 Cigarette Tax Enactment in force is preempted by federal law.

*C.I.R. v. Sunnen*, 333 U.S. 591, 68 S.Ct. 715, 92 L.Ed. 898 (1948) “A judicial declaration intervening between the two proceedings may so change the legal atmosphere to render the rule of collateral estoppel inapplicable.” *Id.* at 600. Justice Hale was far ahead of all these cases when he recognized federal preemption in *Makah Indian Tribe v. Clallam County*, 73 Wash.2d 677, 685, 440 P.2d 442 (1968). The case is still good law and binding on this Court.

***Confederated Tribes of the Chehalis Reservation v. Thurston County Board of Equalization*, 724 F.3d 1153 (9<sup>th</sup> Cir. 2013) applies.**

The case is exactly in point as the case involves the purchase, in 2002, of an off reservation allotment for an Indian business. All types of state taxes are prohibited on Indian country. See, e.g., *Oklahoma Tax Commission v. Chickasaw Nation*, 515 U.S. 450, 115 S.Ct. 2214, 132 L.Ed.2d 400 (1995). If the legal incidence of an excise tax rests on a tribe or tribal members it is prohibited. *Id.* at 458, citing examples of cigarette tax, income tax and personal property tax. The Secretary of Interior, pursuant to 25 U.S.C. § 465, purchased land for the Comenout’s father from his trust funds in 1926. The

statute provides that “such lands and rights shall be exempt from State and local taxation.” *Oneida Tribe of Indians of Wis. v. Village of Hobart, Wis.*, 732 F.3d 837 (7<sup>th</sup> Cir. 2013), a Posner opinion, applying 25 U.S.C. 465, invalidated a storm water city tax on Indian trust lots within the city on the basis of federal preemption. *Id.* at 839. “Tribal Trust Land, in contrast, may not be taxed by either state or local governments. 25 U.S.C. § 465.” *Id.* at 838. *Posner* also reviews the 1887 Allotment Act, the same law that allowed the Comenout land to be acquired in 1926.

It is awkward for parcels of land subject to one sovereign to be scattered throughout a territory subject to another, but actually it’s a familiar feature of American Government. Federal facilities of all sorts, ranging from post offices to military bases, are scattered throughout the United States and are subject to as much regulation by states and local governments as the federal government permits. A similar scatter is common in Indian country, primarily as a result of allotment acts (later repealed) in the late 1800's and early 1900's; notably the Dawes (General Allotment) Act of 1887, 25 U.S.C. § 331, acts allotting reservation land to liberate them from tribal ownership that Congress in that era considered socialistic, to encourage their assimilation into mainstream American life. . .” *Id.* at 839.

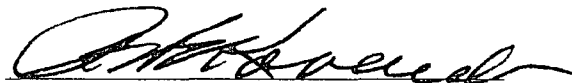
*Your Food Stores, Inc. v. Village of Espanola*, 361 P.2d 950, 955-956 (N.M. 1961), invalidated state sales taxes imposed on a store on Indian land. The U.S. Supreme Court validated the New Mexico decision. *Warren Trading Post Co., v. Arizona Tax Commission*, 380 U.S. 685, 691 fn. 18, 855

S.Ct. 1242, 14 L.Ed.2d 165 (1965) commenting on *Your Food* stated “we think that interpretation was correct.” Comenout ran a convenience store similar to Your Food Stores. *Thurston County* is valid precedent.

### **CONCLUSION**

This case must be reversed and sent back to the trial court to fashion a remedy.

RESPECTFULLY SUBMITTED this 31<sup>st</sup> day of December, 2015.

A handwritten signature in black ink, appearing to read 'Robert E. Kovacevich', written over a horizontal line.

ROBERT E. KOVACEVICH, # 2723  
Attorney for Appellant



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COURT OF APPEALS  
DIVISION II  
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STATE OF WASHINGTON  
BY Deputy

### CERTIFICATE OF SERVICE

This is to certify that a copy of the Reply Brief was served on County  
for Respondent by emailing and mailing the same by First Class mail on  
December 31, 2015, in a postage-paid wrapper addressed as follows:

Ms. Jennifer Elias  
Assistant Attorney General  
Attorney General's Office  
P.O. Box 40100  
Olympia, WA 98504-0100

DATED this 31<sup>st</sup> day of December, 2015.

  
ROBERT E. KOVACEVICH  
Attorney for Appellant

## **APPENDIX A**

# Cigarette Tax

MARCH 2015

**This publication provides general information about the cigarette tax. It does not cover every aspect of the tax. In addition, it does not change or overrule any administrative regulation or ruling issued by the Department of Revenue.**

## DID YOU KNOW . . .

If you buy cigarettes in another state and bring them back to Washington, you may owe Washington taxes.

Cigarettes purchased at military installations also carry some restrictions.

If you possess untaxed cigarettes in Washington, you may be subject to penalties.

**Note:** An additional cigarette tax is collected by the United States government. The federal excise tax is normally collected when a manufacturer removes cigarettes from the factory or when a importer removes cigarettes from customs custody.

## TAXES ON CIGARETTES

Washington imposes a cigarette tax on the sale, use, consumption, possession or distribution of cigarettes.

The Washington tax on a pack of 20 cigarettes is \$3.025 and on a pack of 25 cigarettes is \$3.78125.

Cigarette tax is paid by purchasing tax stamps. The stamps must be affixed to cigarette packs to show proof of payment of the tax.

Cigarettes possessed in Washington are subject to cigarette tax and either the sales or use tax. Use tax is due on items that are used in Washington, including cigarettes, that are purchased without paying sales tax. Use tax is calculated in the same manner as the sales tax.

You are entitled to a credit for sales or use taxes paid to another state. There is no credit for cigarette taxes paid to another state.

When a consumer purchases cigarettes from a Washington retailer, the cigarette tax is included in the purchase price (tax stamp should be affixed to the package) and the sales tax is collected.

## UNTAXED CIGARETTE PURCHASES BY CONSUMERS

Effective July 26, 2009 it is illegal to ship or transport cigarettes ordered or purchased by mail or through the internet to anyone in Washington State other than a licensed cigarette retailer or wholesaler. Shipping or transporting of unstamped cigarettes ordered or purchased by mail or through the internet to a consumer is a class C felony (maximum fine of \$5,000).

If a consumer buys cigarettes from an out-of-state retailer (i.e. while visiting Oregon or Idaho) or from an in-state tribal retailer (without a Washington or tribal tax paid stamp affixed), Washington's cigarette and use taxes must be paid directly to the Department of Revenue on a Tax Declaration for Cigarettes form within 72 hours of possession of the cigarettes. The tax declaration form is available on our website [dor.wa.gov](http://dor.wa.gov) or by calling 1-800-647-7706.

Keep a copy of the completed form and evidence of payment to support your legal possession of unstamped cigarettes. If you have unstamped cigarettes in your possession and you are stopped by law enforcement officers, you must have evidence with you that you intended to report and pay any taxes due, such as the completed tax declaration. If you do not have this evidence with you, the cigarettes will be considered contraband.

## PENALTIES FOR POSSESSION OF UNTAXED CIGARETTES

Any untaxed cigarettes found in your possession are considered contraband and, under state law, are subject to seizure and forfeiture. You will be assessed cigarette tax, sales or use tax, a 5% assessment penalty and a remedial penalty at the greater of \$250 or \$10 per pack.

Possession of 50 cartons or less of untaxed cigarettes, without proper notice, authorization and documentation is a misdemeanor. Possession of more than 50 cartons, without proper notice, authorization and documentation is a class C felony.

## TRIBAL RESERVATIONS

Most tribes collect tribal cigarette and sales tax in place of the state taxes pursuant to tax agreements between the tribes and the state. Anyone of legal age may purchase and possess cigarettes from tribal retailers covered by one of these contracts.

Enrolled tribal members may purchase cigarettes within their tribe's jurisdiction without paying state taxes. Some Native American tribes receive an allocation of tax exempt cigarettes for this purpose.

Tribal retailers are obligated to collect tax on sales to individuals who are not enrolled members of the tribe. If a state tax or a tribal tax is not collected, non-tribal members who purchase cigarettes on reservations must pay state cigarette and use taxes on their purchases. To remit the tax, see section on "untaxed cigarette purchases by consumers" on page 1.

## MILITARY RESERVATIONS

If you are on active duty or retired military person, or a dependent, you are entitled to purchase cigarettes on military reservations for your own use without owing any state tax.

Military personnel are not allowed to purchase cigarettes to give or resell to others. The military may revoke your commissary and exchange privileges if you are caught doing so. Also, the person receiving the cigarettes will be subject to the taxes and penalties described on page 1.

**Note:** Cigarette sales at non-military retail outlets to military personnel are taxable.

## ROLL YOUR OWN CIGARETTES

Effective July 1, 2012 retailers who provide customers with access to a commercial roll-your-own (RYO) cigarette-making machine are required to provide containers for customers to transport RYO cigarettes from the retailer's place of business and to affix special RYO cigarette tax stamps to each container provided. Cigarette tubes/papers must be provided in one or more 20-units denominations.

## CIGARETTE STAMPS

### PROOF OF TAX PAID

In Washington, all cigarettes, except those sold on military reservations, should have a cigarette stamp affixed to the bottom of each pack or RYO container.

Washington State distributes stamps with serial numbers and various colors. Cigarettes on which Washington State cigarette taxes have been paid will have pink and blue stamps on 20-packs, and blue, white and silver stamps on 25-packs. RYO cigarettes will have a yellow and black stamp on a 20 cigarette container and violet and black stamp on a 200 cigarette container. Tax-exempt cigarettes sold on Indian reservations to tribal members will have green and white stamps labeled "Washington Tax Exempt."

Most tribes have signed contracts to sell cigarettes and are collecting tribal taxes in place of state taxes. All cigarettes sold by tribes under an agreement will have either a green compact stamp or their own tax stamp.

Purchases of tribally stamped cigarettes by non-tribal members are intended for personal use only and not for re-sale.

## ENFORCEMENT

The Liquor and Cannabis Board enforces the cigarette tax for Washington State. The Board enforces retail and wholesale licensing, sales to minors, vending machine sales, sampling and illegal cigarette sales and possession.

For more information on cigarette enforcement activities or to file a complaint or a tip, you can visit the Liquor and Cannabis Board's website [www.liq.wa.gov](http://www.liq.wa.gov).

## LICENSING

Retail, wholesale and vending machine cigarette licenses must be obtained through the Business Licenses Services. They can be reached by calling (800) 451-7985 or visiting their website at [www.bls.dor.wa.gov](http://www.bls.dor.wa.gov).

Annual license fees are:

Wholesaler.....	\$650
Branch Wholesaler.....	\$115
Retailer.....	\$93
Commercial Cigarette Making Machine .....	\$93
Vending Machine.....	\$30

Wholesalers are required to post a \$5,000 Proper Performance Bond. Retailers and wholesalers are required to complete a personal/criminal history statement.

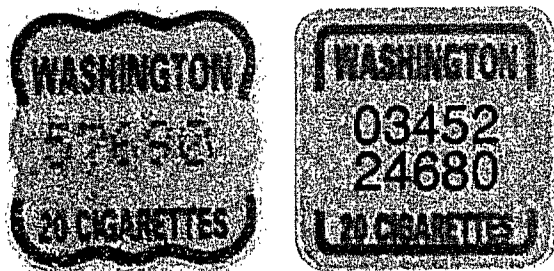
## CIGARETTE TAX FUNDING

The cigarette tax is currently deposited into the state's general fund, which supports most state services. In the fiscal year 2011 (July 1, 2010 thru June 30, 2011), the cigarette tax generated \$432.6 million.

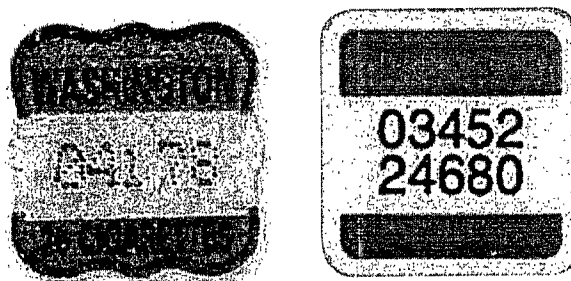
# Cigarette tax stamps used in Washington State

Washington State distributes these ten stamps:

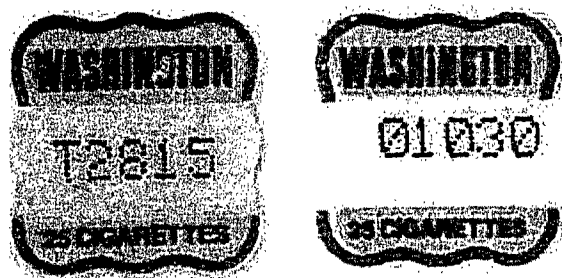
Regular stamps for packs containing 20 cigarettes



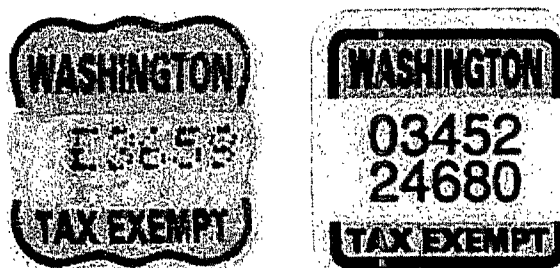
Stamps for wide packs or hand stamping



Stamps for packs containing 25 cigarettes



Indian allocation tax exempt stamps for sale to enrolled tribal members only

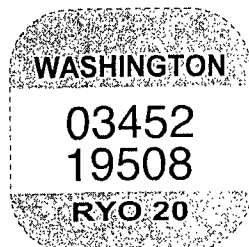


Actual sizes of stamps:

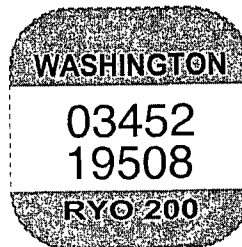


Effective July 1, 2012, retailers who provide customers with access to a commercial roll-your-own (RYO) cigarette-making machine are required to provide containers for customers to transport RYO cigarettes from the retailer's place of business and to affix cigarette tax stamps to each container provided.

Stamps for containers of 20 cigarettes



Stamps for containers of 200 cigarettes



Actual size of stamp:

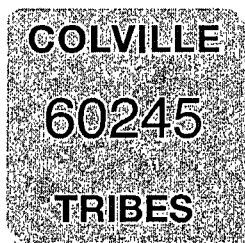


These compact tribes have designed their own stamps. Cigarettes bearing these stamps can be purchased by anyone and are legal on and off the reservation.

Chehalis



Colville



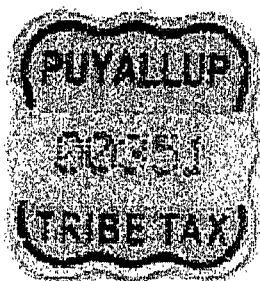
Kalispel



Lower Elwha Klallam



Puyallup sells cigarettes with two types of stamps



Shoalwater Bay



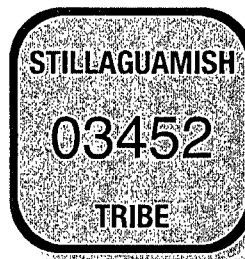
Spokane



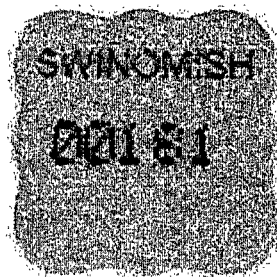
Squaxin Island sells cigarettes with two types of stamps



Stillaguamish



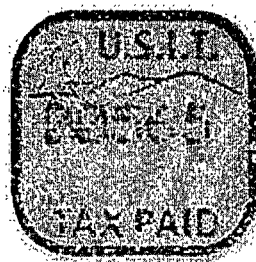
Swinomish



Tulalip



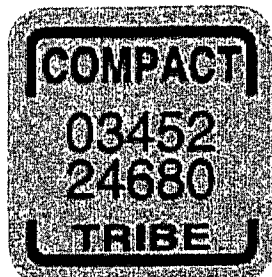
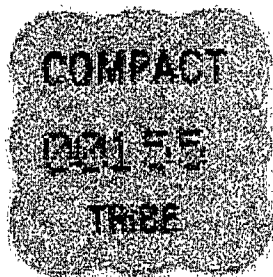
Upper Skagit



Actual sizes of stamps:



Compact stamps are used by tribes that have signed a contract with the state to collect cigarette and sales taxes. Cigarettes with compact stamps can be purchased by anyone and are legal on and off the reservation.



Actual size of stamp:



#### These tribes use the generic compact stamp:

Jamestown S'Klallam	Quinault
Lummi	Sauk-Suiattle
Muckleshoot	Skokomish
Nisqually	Snoqualmie
Nooksack	Suquamish
Port Gamble S'Klallam	

#### SPECIAL NOTICE

Special notice dated May 25, 2012 - Commercial cigarette-making machines operated at retail establishments and the taxation of roll-your-own cigarettes.

Special Notice dated April 13, 2010 - Cigarette tax rate increases, identifies the new tax rate that began May 1, 2010.

#### FORMS

Tax Declaration for Cigarettes (#82-2090)

Washington Cigarette Wholesaler Information (#82-2099)

#### LAWS AND RULES

Revised Code of Washington (RCW) Chapter 82.24  
Tax on cigarettes

Washington Administrative Code (WAC) WAC 458-20-186  
Tax on cigarettes

WAC 458-20-192  
Indians - Indian Country

Special notices, forms, rules and laws and other publications are available on our website at [dor.wa.gov](http://dor.wa.gov) or you can request copies by calling our Telephone Information Center at 1-800-647-7706.

#### FOR MORE INFORMATION

If you have specific questions about the cigarette tax, contact the Department of Revenue at 1-360-534-1503, option 3.

You may also write to:

**Special Programs**  
**Washington State**  
**Department of Revenue**  
PO Box 47477  
Olympia, WA 98504-7477  
FAX (360) 534-1499

## Resources to help quit smoking

Washington State Department of Health Tobacco Quit Line website: [quitline.com](http://quitline.com)

Washington Tobacco Quit Line Phone Numbers: 1-800-QUIT-NOW (1-800-784-8669)

Spanish Line: 1-877-2NO-FUME (1-877-266-3863)

Hearing Impaired: 1-877-777-6534



## DEPARTMENT OF REVENUE TAXPAYER ASSISTANCE

### LOCAL OFFICE LOCATIONS

2101 4th Ave, Suite 1400  
SEATTLE 98121-2300  
(206) 727-5300

734 E First St, Suite B  
PO Box 400  
PORT ANGELES 98362-0064  
(360) 417-9900

20819 72nd Ave South  
Suite 680  
KENT 98032  
(425) 656-5100

6500 Linderson Way SW  
Suite 102  
PO Box 47478  
OLYMPIA 98504-7478  
1-800-647-7706

3315 South 23rd St, Suite 300  
PO Box 111180  
TACOMA 98411-1180  
(253) 382-2000

1904 Humboldt St, Suite A  
PO Box 1176  
BELLINGHAM 98227-1176  
(360) 594-4840

19800 North Creek Parkway, Suite 101  
BOTHELL, WA 98011  
(425) 984-6400

630 N Chelan Ave, Suite B-3  
PO Box 220  
WENATCHEE 98807-0220  
(509) 663-9714

1330 N Washington, Suite 5600  
SPOKANE 99201-2456  
(509) 327-0200

3703 River Rd, Suite 3  
YAKIMA 98902-7325  
(509) 454-5160

1657 Fowler St  
PO Box 140  
RICHLAND 99352  
(509) 987-1201

8008 NE 4th Plain Blvd, Suite 320  
PO Box 1648  
VANCOUVER 98668-1648  
(360) 256-2060

### TELEPHONE INFORMATION CENTER

**1-800-647-7706**

### WEBSITE

**DOR.WA.GOV**

For tax assistance or to request this document in an alternate format, visit our website, [dor.wa.gov](http://dor.wa.gov) or call 1-800-647-7706. Teletype (TTY) users may call (360) 705-6718.

The information contained in this fact sheet is current as of the date of this publication and provides general information about Washington's business taxes. It does not cover every aspect of the taxes, nor does it alter or supersede any administrative regulations or rulings issued by the Department.



## **APPENDIX B**



08-1-04682-8 39071517 ORDSMWO 08-23-12

## SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

FILED  
IN OPEN COURT  
CDPJ

AUG 23 2012

Pierce County, Clerk  
By AP  
DEPUTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 08-1-04682-8

vs.

ROBERT REGINALD COMENOUT, SR,

MOTION AND ORDER FOR  
DISMISSAL WITHOUT PREJUDICE

Defendant.

DOB: 03/19/31

SID #: WA

## MOTION

Comes now the plaintiff, herein, by its attorney, MARK LINDQUIST, Prosecuting Attorney for Pierce County, and moves the court for an order dismissing without prejudice the above entitled action, on the grounds and for the reason that after this case was returned for trial by the Court of Appeals, it was discovered that some of the evidence which is necessary for this prosecution to proceed has been misplaced by the investigating agency and can not be located.

DATED: this 23rd day of August, 2012

MARK LINDQUIST  
Pierce County Prosecuting Attorney  
by: APRIL D MCCOMB  
Deputy Prosecuting Attorney  
WSB#: 11570

08-1-04682-8

## ORDER

The above entitled matter having come on regularly for hearing on motion of MARK LINDQUIST, Prosecuting Attorney, and the Court being fully advised in the premises, it is hereby;

ORDERED that the above entitled action be and same is hereby dismissed without prejudice, bail is hereby exonerated. Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

DATED the 23rd day of August, 2012.

JUDGE

*[Signature]*  
Judge

FILED  
IN OPEN COURT  
CDPJ

AUG 23 2012

Pierce County, Clerk  
By *[Signature]*  
DEPUTY

## **APPENDIX C**

ALFRED L. COOPER, PRINTING, TACOMA, WASH.

TO HAVE AND TO HOLD, The said premises with all their appurtenances unto the said party of the second part and to his heirs and assigns forever; and the said Fidelity Rent & Collection Company party of the first part for itself and its successors, does hereby covenant to and with the said party of the second part, his heirs and assigns, that it is the owner in fee simple of said premises, and that they are free from all incumbrances and that it will WARRANT and DEFEND the title thereto against all lawful claims whatsoever.

IN WITNESS WHEREOF, The said party of the first part has caused its corporate name and seal to be hereunto subscribed and affixed; and these presents to be executed by its officers thereunto duly authorized, this 26th day of October 1926.

Executed in Presence of

\*\*\*\*\*  
" FIDELITY RENT AND COLLECTION COMPANY "  
" CORPORATE SEAL 1891 "  
\*\*\*\*\*

STATE OF WASHINGTON, )  
County of Pierce. )ss.

On this 26th day of October 1926, before me personally appeared J. C. Heitzman and E. C. Gemberling, to me known to be the President and Secretary of the corporation that executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

\*\*\*\*\*  
" M. E. Phelan NOTARY PUBLIC "  
" STATE OF WASHINGTON "  
" COMMISSION EXPIRES JAN. 9, 1930 "  
\*\*\*\*\*

FIDELITY RENT & COLLECTION COMPANY  
By J. C. Heitzman, Its President.  
Attest E. C. Gemberling, Its Secretary.

Filed and recorded at request of Wm. G. Nicol Nov 5, 1926 at 8:03 A. M.

F. Campbell, Jr. Auditor Pierce Co. Wn.

By *E. C. Gemberling*

Deputy

-I.K.-

829987

THIS INDENTURE WITNESSETH, That Fidelity Finance Company a corporation organized and existing under the laws of the State of Washington, party of the first part, for and in consideration of the sum of Ten and no/100 (\$10.00) Dollars and other valuable considerations Dollars, in lawful money of the United States of America, and to it in hand paid by Clara Nicol, party of the second part, has GRANTED, BARGAINED and SOLD and by these presents does Grant, Bargain, Sell and Convey unto the said party of the second part and to her heirs and assigns, the following described real property, situate, lying and being in the County of Pierce, State of Washington, to-wit:

Beginning 30.00 feet West and 30.00 feet South of the Northeast corner of the Southeast quarter of the Southwest quarter of Section 34, Township 21 North, Range 2 East, W. M., thence continuing South parallel to east line of above described tract 126.00 feet, thence West parallel to North line above described tract 300.00 feet, thence North 126.00 feet, thence East 300.00 feet to beginning and containing 0.87 acres more or less, being Lot 1 in the unrecorded plat of Hollywood Terrace, as surveyed by D. H. White.

TO HAVE AND TO HOLD, The said premises, with all their appurtenances unto the said party of the second part and to her heirs and assigns forever; and the said Fidelity Finance Company party of the first part, for itself and its successors, does hereby covenant to and with the said party of the second part, her heirs and assigns, that it is the owner in fee simple of said premises, and that they are free from all incumbrances, Subject to any taxes and assessments that have become a lien against the herein described property since May 21st, 1926 and that it will WARRANT and DEFEND the title thereto against all lawful claims whatsoever.

IN WITNESS WHEREOF, The said party of the first part has caused its corporate name and seal to be hereunto subscribed and affixed; and these presents to be executed by its officers thereunto duly authorized, this 8th day of July 1926.

Executed in Presence of

\*\*\*\*\*  
" FIDELITY FINANCE COMPANY TACOMA, WASH. "  
" CORPORATE SEAL 1916 "  
\*\*\*\*\*

STATE OF WASHINGTON, )  
County of Pierce. )ss.

On this 8th day of July 1926, before me personally appeared J. C. Heitzman and E. C. Gemberling, to me known to be the President and Secretary of the corporation that executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

\*\*\*\*\*  
" M. E. Phelan NOTARY PUBLIC "  
" STATE OF WASHINGTON "  
" COMMISSION EXPIRES JAN. 9, 1930 "  
\*\*\*\*\*

FIDELITY FINANCE COMPANY  
By J. C. Heitzman, Its President.  
Attest E. C. Gemberling, Its Secretary

Filed and recorded at request of Wm. G. Nicol Nov 5, 1926 at 8:04 A. M.

F. Campbell, Jr. Auditor Pierce Co. Wn.

By *E. C. Gemberling*

Deputy

-I.K.-

826770

WARRANTY DEED (Statutory Form)

(Office of Indian Affairs)  
RECEIVED  
Sep 18, 1926  
43636

The Grantor, William Attridge, a widower, of Puyallup, Pierce County, Washington, for and in consideration of the sum of Thirty Seven Hundred (\$3,700.00) Dollars, in hand paid, conveys and warrants to Edward Comenout, a noncompetent Quinault Indian, the following described real property situated in the County of Pierce and State of Washington, to-wit:-

Commencing at a point 26b.14 known and designated upon a of the E. F. Wright D.L.C. N for record in the office of 356.33 feet to a stake; then thence easterly along the me of said plat; thence South a beginning, containing two an over the east twenty (20) fe

Also the following described to-wit:  
All that portion of the abar lines, between Government Lot twenty-one (21), Township 21 lying south of the South bar feet of Tract one (1) of the Puyallup, EXCEPTING therefi bank, containing 38/100 acre

Together with the tenements, including, and the remainder or rem TO HAVE AND TO HOLD the abov ulge forever, UPON THE CONDITION t be alienated or encumbered witho IN WITNESS WHEREOF, the said Lt. 1926.  
Knap, Sealed and Delivered in the pr By A. Avery  
Mc Mill.

STATE OF WASHINGTON, )  
COUNTY OF PIERCE. )ss.

I, Floy A. Avery, a Notary I 17th day of September A.D. 1926, perso al described in and who executed the as his free and voluntary act as Given under my hand and off: \*\*\*\*\*

" FLOY A. AVERY NOTARY PUBLIC "  
" STATE OF WASHINGTON "  
" COMMISSION EXPIRES DEC. 8, 1927 "  
\*\*\*\*\*

STATE OF WASHINGTON )  
COUNTY OF PIERCE )ss.

I, W. B. Sams, Superintendent all for the within described real pr profit of the grantee, said real pr Dated at Hoquiam, Washington

Witness Ind. Affs.  
Laid Dis.  
Recorded in Misc. Deed Book  
Vol. 22, page 71 October 18, 1926.

Filed and recorded at request of W. I  
*W. B. Sams*

8276

The Grantor, HAVELOCK C. BOY the of (\$1.00) One Dollar and other HAVELOCK CO. the following describe

Lots Five (5) to Forty-four designated upon a certain pl which plat was filed for rec and recorded in Book 2 of P1

situated in the County of Pierce, Sta This conveyance is made subj Dated at Tacoma, Washington, IN WITNESS WHEREOF, Havelock is attested by its Secretary and see of Article V. of the By-Laws now in f corporation is authorized and empower contracts and other obligations and i the Board of Trustees, and the Secret filio to all instruments requiring th

\*\*\*\*\*  
" HAVELOCK C. BOYLE & CO. TACOMA, WA "  
" CORPORATE SEAL "  
\*\*\*\*\*

STATE OF WASHINGTON, )  
County of Pierce. )ss.

On this 19th day of October, to me known to be the President that executed the within and foregoing Notary act and deed of said corpora that they were authorized to execute t corporation.

## DEED RECORD—No. 493

437

PIERCE COUNTY, WASHINGTON

Commencing at a point 265.14 feet north of the southeast corner of Lot two (2) as the same is known and designated upon a certain plat entitled "George O. Kelly's 2nd Subdivision of part of the B. F. Wright D.L.C. No 39, in Sections 20, 21, 28, 29, Twp 20 N., R. 4 E. W.M." filed for record in the office of the Auditor of Pierce County, July 10th, 1903; thence running west 366.53 feet to a stake; thence North 34b.47 feet to a stake on the bank of the Puyallup River; thence easterly along the meander line of said River 383.07 feet to the east line of Lot One (1) of said plat; thence South along the east line of said Subdivision 204.76 feet to the point of beginning, containing two and one-quarter acres, more or less; also a right of way for a road over the east twenty (20) feet of said Lot two (2).

Also the following described real property situated in the County of Pierce, State of Washington, to-wit:

All that portion of the abandoned channel of the Puyallup River within the Government meander lines between Government Lot three (3) and the B.F. Wright Donation Land Claim in Section twenty-one (21), Township twenty (20) North, Range Four (4) east of the Willamette Meridian, lying south of the South bank of the present channel of said River, and north of the east 366.33 feet of Tract one (1) of the George O. Kelly's 2nd Subdivision, an Addition to the Town of Puyallup, EXCEPTING therefrom a strip of land thirty (30) feet in width adjacent to said South bank, containing 38/100 acres, more or less.

Together with the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the remainder or remainders, reversion or reversions, rents, issues and profits thereof.

TO HAVE AND TO HOLD the above described real property to the said Edward Comenout his heirs and assigns forever, UNOS THE CONDITION that while the title thereto is in the grantee or heirs, the same shall not be alienated or encumbered without the consent of the Secretary of the Interior.

IN WITNESS WHEREOF, the said Grantor hath hereunto set his hand and seal this 10<sup>th</sup> day of September A.D. 1926.

Sealed and Delivered in the presence of

William Attridge

(SEAL)

By A. Avery

Notary Public

CITY OF WASHINGTON, )  
COUNTY OF PIERCE, ) ss.

I, Floy A. Avery, a Notary Public in and for said County and State, do hereby certify that on this 10<sup>th</sup> day of September A.D. 1926, personally appeared before me William Attridge, to me known to be the individual described in and who executed the within instrument, and acknowledged to me that he signed and sealed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

Given under my hand and official seal this 10<sup>th</sup> day of September A.D. 1926.

FLOY A. AVERY NOTARY PUBLIC

STATE OF WASHINGTON

COMMISSION EXPIRES DEC. 8, 1927

Floy A. Avery  
Notary Public in and for the State of  
Washington, residing at Puyallup, Pierce  
County, Washington.

## SUPERINTENDENT'S CERTIFICATE

---0000000---

CITY OF WASHINGTON )

COUNTY OF PIERCE, ) ss.

I, W. B. Sams, Superintendent of the Taholah Indian Agency, do hereby certify that the consideration of the within described real property is money held in trust by the UNITED STATES OF AMERICA for the benefit of the grantee, said real property being purchased for a home.

Dated at Hoquiam, Washington, this 13th day of September A.D. 1926.

Witness My Hand.

Lead Dis.

Recorded in Misc. Deed Book

Vol. 22, page 71 October 18, 1926.

W. B. Sams  
Superintendent of the Taholah Indian  
Agency, Hoquiam, Washington.

Filed and recorded at request of W. B. Sams Nov 5, 1926 at 9:00 A. M.

F. Campbell, Jr. Auditor Pierce Co. Wn.

Deputy

-I.B.-

The Grantor, HAVELOCK C. BOYLE & CO., a Corporation of the State of Washington, for and in consideration of (\$1.00) One Dollar and other valuable consideration DOLLARS in hand paid, conveys and warrants to THE RELIANCE CO. the following described Real Estate:

Lots Five (5) to Forty-four (44), both inclusive, in Block Forty-one (41), as shown and designated upon a certain plat entitled "A plat of Southwest Tacoma, Pierce County, W.T." which plat was filed for record in the office of the Auditor of said County October 17, 1888, and recorded in Book 2 of Plats at Pages 55 and 59.

Situated in the County of Pierce, State of Washington.

This conveyance is made subject to the following: any unpaid taxes and assessments.

Dated at Tacoma, Washington, this 19th day of October A.D. 1926.

IN WITNESS WHEREOF, Havelock C. Boyle & Co., has caused these presents to be signed by its President and attested by its Secretary and sealed with its corporate seal under authority given to them by Section III, of Article V. of the By-Laws now in force and reading as follows: "The President or Vice President of the corporation is authorized and empowered to execute all deeds of conveyance of real estate, mortgages, notes, contracts and other obligations and instruments, without being specially authorized to do so by resolution of the Board of Trustees, and the Secretary or Assistant Secretary, is authorized to affix the seal of the corporation to all instruments requiring the seal."

HAVELOCK C. BOYLE & CO.

By W. C. Raleigh, President

Attest: Harold D. Hayward, Secretary

HAVELOCK C. BOYLE & CO. TACOMA, WASHINGTON  
CORPORATE SEAL

CITY OF WASHINGTON, )

County of Pierce, ) ss.

On this 19th day of October A.D. 1926, before me personally appeared W. C. Raleigh and Harold D. Hayward, to me known to be the President and Secretary respectively of HAVELOCK C. BOYLE & CO. the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

to said party of the second company party of the first of the second part, his heirs are free from all incumbrances whatsoever, its name and seal to be hereunto duly authorized, this

NOTION COMPANY  
President.  
Its Secretary.

man and E. C. Gemberling, within and foregoing instrument of said corporation for the execute said instrument

1 the day and year first

for the State of  
at Tacoma in said County.

for Pierce Co. Wn.

nized and existing under on of the sum of Ten and of the United States of D, BARGAINED and SOLD and second part and to her heirs County of Pierce, State of

he Southeast quarter 1 North, Range 2 ed tract 126.00 feet, e North 126.00 feet, , being Lot 1 in the

he said party of the second ty of the first part, for second part, her heirs and from all incumbrances, rided property since May claims whatsoever. te name and seal to be hereunto duly authorized,

IPAMY  
s President.  
s Secretary

and E. C. Gemberling, to me and foregoing instrument did corporation, for the execute said instrument and

1 the day and year first

1 for the State of  
at Tacoma in said County.

for P rce Co. Wn.

fairs)

ington, for and in consid- y and warrants to Edward tuated in the County of



826970

STATE OF WASHINGTON, County of Pierce  
ss: I, Julie Anderson, of the above  
entitled county, do hereby certify that this  
forgoing instrument is a true and correct copy  
of the original now on file in my office.  
IN WITNESS WHEREOF, I hereunto set my  
hand and the Seal of Said County.

By: *Julie Anderson* Deputy

Date: 11/4/15